

PTO/SB/85 (03-09)

Approved for use through 03/31/2012. OMB 0851-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)

Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450  
Fax: (571) 273-8300

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SEP 02 2011

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: 5,586,505Application Number: 08/392,247Issue Date: Dec. 24, 1996Filing Date: Feb. 22, 1995

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

☐ is a reissue of original Patent No. \_\_\_\_\_ original issue date \_\_\_\_\_;  
original application number \_\_\_\_\_  
original filing date \_\_\_\_\_ 09/12/2011 DALLEN 00000040 5586505

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2755.00 OP

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application  
\_\_\_\_\_ filed on \_\_\_\_\_

**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**


I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Sep. 1, 2011

Date

  
Signature

Luis Figarella

Typed or printed name of person signing Certificate

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This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/65 (03-09)

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## 1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input type="checkbox"/> \$ _____	7 ½ yr fee	(2552)
<input checked="" type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input checked="" type="checkbox"/> \$ 2,055.00	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 2,055.00

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700.00

## 5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ \_\_\_\_\_
- ☐ Please charge Deposit Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_
- ☒ Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

- ☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. \_\_\_\_\_

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## 7. OVERPAYMENT

As to any overpayment made, please

☒ Credit to Deposit Account No. 50-4092

OR

☐ Send refund check


## WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

## 8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

## 9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

  
\_\_\_\_\_  
Signature(s) of Petitioner(s)9/1/11

Date

Luis Figarella

Typed or printed name(s)

58,300

Registration Number, if applicable

27 Todd Rd., Nashua, NH 03064

Address

603.557.8420

Telephone Number

\_\_\_\_\_  
Address

## ENCLOSURES:

- ☒ Maintenance Fee Payment  
☒ Statement why maintenance fee was not paid timely  
☒ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)  
☐ Other: \_\_\_\_\_

PTO/SB/65 (03-09)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

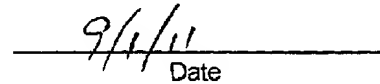
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

  
Signature

Luis Figarella

Type or printed name

  
Date

58,300

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

See attached note

(Please attach additional sheets if additional space is needed)

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## Statement of Unavoidable Delay in Payment

Mr. Elberto Berdut-Teruel is a client of mine in Puerto Rico, whom I met through his membership in the local PR Inventors Association. As the Commissioner may be aware of, residents of Puerto Rico are severely underrepresented in the Patent space. I have been working with Mr. Berdut-Teruel since May of 2010, having successfully prosecuted two of his patent applications, as well as prepared and submitted a number of other application.

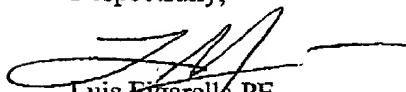
In celebrating his latest allowance earlier in the month (8,018,116 Electric Motor of Parallel Cycles, due out on Sept 13<sup>th</sup>), I mentioned to Don Elberto that as with his other patent through me 7,955,251, I would be reminding him in 3 ½ years of his need to pay the maintenance fee. He mentioned his previous lawyers always paid the fee and invoiced him. He did mention that it had been a while, and to please check his other issued patents for him, since he had not heard from them in a while.

Upon my checking, I found that some of his patents had expired from non-payment of maintenance fee, while others had not. In particular, 5,586,505 "Levitation System using permanent magnets...", Appl. No. 08/392,247. Don Elberto was very surprised, as he believed he was up to date. Given that the fees were paid for its parents 5,452,663, 5,431,109, Don Elberto cannot understand why the fees for this one in particular were not paid.

While we know that under California Med. V. Technol Med. (D. Del 1995) a patent owner has to make some effort to educate his/herself, Don Elberto speaks no English, and thus would have been hard pressed to have a casual conversation with his previous representatives. As with another of my "Boricua" clients (although Don Elberto was born in Cuba, he raised his family in PR), he would be hard pressed to find information and incapable of reading most if not all USPTO documents.

No deception or any other such action was intended in the delay in payment. I am comfortable in pleading a case of unavoidable delay for Mr. Berdut-Teruel, and hope the Office will concur.

Respectfully,



Luis Figarella PE  
Patent Agent  
USPTO Reg. 58,300